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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~618.~~ 709 89

CHARLES WATTS, PLAINTIFF IN ERROR,

vs.

THE TERRITORY OF WASHINGTON.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF WASHINGTON.

FILED OCTOBER 28, 1873.

SUPREME COURT OF THE UNITED STATES.

No. 618.

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1 Be it remembered that at a regular term of the United States district court of the third judicial district of Washington Territory, holding terms at Port Townsend, for Jefferson et al. co'ys, begun and held at Port Townsend on Monday, the 4th day of September, A. D. 1871, the following, among other things, were done and transacted at said term of court, as appears by the records thereof, viz:

TUESDAY, (2D JUDICIAL DAY,) *Sept. 5th*, 1871.

Comes now J. J. H. Van Bokkelen, sheriff of Jefferson County, into open court, and returns his venire for grand jurors with the names of the following persons thereon, duly summoned on the part of the Territory of Washington, to wit: Albert Briggs, E. S. Fowler, George S. Knight, D. M. Littlefield, A. A. Plummer, Charles Eisenbier, J. G. Swan, James Nesbitt, Samuel Nailor, O. H. Morgan, Samuel Hancock, Golday Crockett, R. L. Doyle, James Forseman, Henry Hoffman, and Michael
2 Shooman, of whom Albert Briggs was appointed foreman, sixteen good and lawful men, qualified electors and householders, from the body of the 3d judicial district of Washington Territory, when the following persons, who were held in custody to await the action of the grand jury, to wit: John Brown, George Evans, and Frank Shipley, attended by their counsel, John P. Judson, esq., and Charles Watts, attended by his attorney, Frank Clark, esq., appeared in open court, and, being asked if they had any objection to any one of the grand jurors present, answered, by their attorneys, that they had none. The grand jury, on the part of the Territory, were duly elected, empaneled, tried, and sworn and duly charged by the court, and then retired to deliberate.

And afterward, on the 5th judicial day, Friday, September 8th, 1871, the following entry appears of record of said term, to wit:

3 The grand jury, having no further business before them, asked to be discharged, and were accordingly discharged by the court.

And afterwards, on the 7th judicial day, Monday, Sept. 11th, 1871, the following entry appears of record of said term, to wit:

It having been proved to the satisfaction of the court that the public interest would be promoted by resummoning the grand jury in the manner prescribed by law, it is, therefore, ordered by the court that a summons be issued directed to the sheriff of Jefferson County to resummon the grand jury on the part of the Territory to act specially in the case of the Territory vs. Charles Watts, a prisoner now in custody in the county jail, and that the sheriff report at one o'clock p. m.

Court adjourned to meet at one o'clock, p. m.

The hour of one o'clock p. m. having arrived, the court was opened in due form.

4 Comes now the sheriff of Jefferson County and returns his summons for grand jurors resummoned, to wit: A. Briggs, E. S. Fowler, C. Eisenbeis, J. G. Swan, R. L. Doyle, Golday Crockett, D. M. Littlefield, A. A. Plummer, George S. Knight, and the other grand jurors who had served for this term, were reported not found; whereupon the court ordered the sheriff of Jefferson County to summon a sufficient number of grand jurors to make a full panel of sixteen from the by-standers, and the sheriff of Jefferson County afterward returned into court the names of the following persons, who had been duly summoned, to wit: R. C. Hill,

John T. Sewell, Thomas Cranney, John F. Hinds, Thomas Butler, John F. Sheehan, and George H. Gerrish; and the names of the grand jurors in the box were then called, when Albert Briggs, E. S. Fowler, George S. Knight, Cha's Eisenbeis, J. G. Swan, R. L. Doyle, Golday Crockett, D. M. Littlefield, A. A. Plummer, R. C. Hill, John T. Sewell, Thomas Cranny, John F. Hinds, Thomas Butler,
5 John F. Sheehan, and George H. Gerrish answered to their names, sixteen good and lawful men, qualified electors an' householders of the 3d judicial district, who were accepted on the part of the Territory by C. M. Bradshaw, prosecuting attorney for the 3d judicial district of W. T., and the prisoner, Charles Watts, being present in his own proper person, attended by his attorney, Frank Clark, esq., and being asked if he had any objection to the grand jury present, answered that he had; and then, by his attorney, offered his objections in writing, which were placed on file and overruled by the court, and exception taken and allowed. The grand jury was then duly elected, empaneled, tried, and sworn, and charged by the court, and then retired to deliberate.

The following is a true copy of the objection above referred to, to the grand jury, made by prisoner's counsel with the ruling thereon, viz:

6 TERRITORY OF WASHINGTON
vs.
CHARLES WATTS.

Charles Watts, the prisoner in the above-named case, being now called in and asked if he has anything to say to the present panel of grand jurors, as presented to him, objects to them, and to their consideration of any evidence or indictment against him, because they are not the regular panel of grand jurors for the term, and have not been legally selected, summoned, and elected, but have been especially summoned for the consideration of the complaint of the Territory against this prisoner.

CHA'S WATTS.

Objection overruled.

Ruling excepted to and exception allowed this 11th day of September, A. D. 1871.

O. JACOBS, *Judge.*

And afterwards the following entry appears of record, to wit:

7 THURSDAY, *September* 14, 1871, (tenth judicial day.)

Comes now the grand jury, empaneled on the part of the Territory of Washington, into open court; and, being called, all answered to their names in their box, and by their foreman presented the following bill of indictment, to wit:

TERRITORY OF WASHINGTON
vs.
CHARLES WATTS. } Indictment. Murder in the first degree.

ALBERT BRIGGS, *Foreman.*

A true bill.

Which bill of indictment was filed in the presence of the grand jury in open court; and the grand jury, having no further business before them, were discharged by the court.

And afterwards, same day, the following entry appears of record, to wit:

TERRITORY OF WASHINGTON
vs.
CHARLES WATTS. } Indictment. Murder in the first degree.

Comes now the defendant into open court, in his own proper
8 person, attended by his attorney, Frank Clark, esq.; the Territory being represented by C. M. Bradshaw, prosecuting attorney, and the defendant being asked by the court if his true name was Charles Watts, answered that it was. Whereupon he was duly arraigned, and by the request of the prisoner, the court considering that the petit jury for the term had been discharged, allowed until the first day of the next term of this court for him to enter his plea to the indictment, and he was committed to the jail of Jefferson County until the next term of this court.

The following is a full, true, and complete copy of the indictment herein, together with all the endorsements thereon, to wit:

District court of the third judicial district of Washington Territory, holding terms at Fort Townsend.

TERRITORY OF WASHINGTON
vs.
CHARLES WATTS.

Charles Watts is accused by the grand jury of the Territory
9 of Washington, in and for the counties of Jefferson, Island, Clal'm, and Whatcom, by this indictment of the crime of murder in the first degree, committed as follows:

The said Charles Watts, on the seventeenth day of June, A. D. 1869, in the county of Whatcom, in the district aforesaid, in, and upon one Augustine Hibbard, purposely and of premeditated and deliberate malice, did discharge and shoot off to, against, and upon the said Augustine Hibbard a pistol loaded with gunpowder and one leaden bullet; and that the said Charles Watts, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by the force of the gunpowder aforesaid, by the said Charles Watts discharged and shot off as aforesaid, then and there, purposely and of deliberate and premeditated malice, did then and there strike, penetrate, and wound the said Augustine Hibbard in and upon the face and heart of him, the said Augustine Hibbard, giving
to him, the said Augustine Hibbard, then and there, with the
10 leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid by the said Charles Watts, in and upon the face and heart of the said Augustine Hibbard, two mortal wounds, each of the depth of three inches and of the width of one-half inch, of which said mortal wounds the said Augustine Hibbard then and there immediately died; and so the grand jury aforesaid do say that the said Charles Watts, him, the said Augustine Hibbard, in the manner and by the means aforesaid, purposely, and of deliberate and premeditated malice, did kill and murder, contrary to the statute in such cases made and provided, and against the peace and dignity of the Territory of Washington.

Dated at Port Townsend, in the district aforesaid, this 14th day of September, A. D. 1871.

C. M. BRADSHAW,
District Attorney.

Said indictment has the following endorsements on the back, viz:

11 Territory of Washington vs. Charles Watts. Indictment. Murder in the first degree. A true bill. Albert Briggs, foreman. Filed in open court, in presence of the grand jury, this 14th day of September, A. D. 1871. Edward Seavy, clerk. Witnesses, Edward Flemming, George Webber, Augustus Cutler, and Samuel Walker.

And afterwards, in 1872, at the February term of said court the following entry appears of record.

February term, A. D. 1872, second judicial day.

TERRITORY OF WASHINGTON
vs.
CHARLES WATTS.

Comes now the defendant, Charles Watts, by his attorneys, Wyche and Clark, and demurs to the indictment in this case, which demurrer was argued and overruled, to which ruling defendant's attorneys except, and exception is allowed, and the defendant, Charles Watts, being
12 present in open court in his own proper person, plead not guilty to the indictment.

And afterwards the following entry appears of record, to wit:

March 1st, A. D. 1872, fifth judicial day.

TERRITORY OF WASHINGTON
vs.
CHARLES WATTS. } Indictment. Murder in first degree.

Comes now the Territory of Washington by her attorney, C. M. Bradshaw, esq., and the defendant, Charles Watts, in his own proper person, into open court, attended by his attorney, Frank Clark, esq., and comes now a jury of twelve good and lawful men, to wit, Peter De Jump and eleven others, who were duly empanneled, tried, and sworn to well and truly try, and true deliverance make between the Territory of Washington, plaintiff, and the prisoner at the bar, Charles Watts, whom they should have in charge according to the evidence; and the trial
13 commenced and continued by the examination of witnesses, until the hour of five o'clock p. m., when the jury were admonished by the court and placed in charge of a sworn bailiff, and the court then took a recess until 7 o'clock p. m.

The hour of seven o'clock p. m. having arrived, comes now the Territory of Washington, by her attorney, C. M. Bradshaw, and the defendant, Charles Watts, in his own proper person, attended by his att'y, Frank Clark, esq., and comes now the jury empaneled in this case, and being called, all answered to their names in their box, and the prisoner, Charles Watts, being called, answered to his name in open court, and the trial was then resumed and continued by the examination of wit-

nesses until the hour of adjournment, when the jury was admonished by the court and placed in charge of a sworn bailiff.

14 TERRITORY OF WASHINGTON *vs.* CHARLES WATTS. } Indictment. Murder in first degree.

Comes now the Territory of Washington, by her attorney, C. M. Bradshaw, esq., and comes now the defendant, Charles Watts, into open court, attended by his attorney, Frank Clark, esq., and comes now the jury empaneled in this case, and the jury being called, all answered to their names in their box, and the defendant, Charles Watts, being called, answered to his name, and the trial was then resumed and continued by the examination of witnesses until the hour of twelve o'clock noon, and the jury were then admonished by the court, and placed in charge of a sworn bailiff, and the court then took a recess until the hour of half past one o'clock p. m.

15 The hour of half past one o'clock having arrived, comes now the Territory of Washington, by her attorney, C. M. Bradshaw, esq., and the defendant in his own proper person, attended by his att'y, Frank Clark, esq., and the jury being called, all answered to their names in their box, and the defendant, Charles Watts, being called, answered to his name in open court. The prisoner present in open court, the trial of this cause continued by the examination of witnesses and the argument of counsel until the hour of half past five o'clock p. m., when the jury were admonished by the court, and placed in charge of a sworn bailiff, and the court then took a recess till the hour of 7 o'clock p. m.

And now the hour of seven o'clock p. m. having arrived, comes now the *the* Territory of Washington, by her attorney, C. M. Bradshaw, esq., and comes also the defendant, Charles Watts, in his own proper person, attended by his attorney, Frank Clark, esq., and comes also the

16 jury empaneled in this cause, into open court, and, being called, all answer to their names in their box, and the defendant, Charles Watts, being called, answered to his name, and the trial then proceeded by argument of counsel, and the argument having closed, the jury was duly charged by the court, and then retired to deliberate upon their verdict.

Comes now into open court the Territory of Washington, by her attorney, C. M. Bradshaw, esq., and the defendant, Charles Watts, in his own proper person, attended by his attorney, Frank Clark, esq., and comes now the jury empaneled in this case, and the jury being called, all answered to their names in their box, and the defendant, Charles Watts, being answered to his name, and the jury being asked if they had agreed upon their verdict, answered that they had, and then, by their foreman, presented the following verdict:

17 We, the petit jury empaneled in the case of Territory of Washington vs. Charles Watts, do agree and find a verdict of guilty of murder in the first degree, as charged in the indictment.

H. ARTHUR SWIFT, *Foreman.*

Frank Clark, esq., counsel for the prisoner, now gave notice that he would file a motion in arrest of judgment, and for a new trial.

Afterwards the following entry appears of record, to wit:

March 7th, A. D. 1872.—Tenth judicial day.

TERRITORY OF WASHINGTON
vs.
CHARLES WATTS. } Indictment. Murder in the first degree.

Comes now the defendant, Charles Watts, by his attorney, Frank Clark, and files a motion for a new trial and in arrest of judgment, which motion the court overrules, to which ruling defendant's attorney excepts, and exception is allowed.

18 The following is a true copy of the motion for a new trial and in arrest of judgment referred to in the above record entry as it appears on file in this office, to wit:

District court, 3d judicial district of Wash. T'y, holding term at Port Townsend, Feb'y term, A. D. 1872.

TERRITORY OF WASHINTON
vs.
CHARLES WATTS. } Indictment for murder.

Clark, counsel for the prisoner, moves the court to set the verdict aside and to grant a new trial herein—

1st. Because the court erred in overruling the demurrer to the indictment.

2d. Because the court erred in permitting evidence to be given to the jury, showing the commission of a homicide on San Juan Island, as proof of the offence charged in the indictment.

3d. Because the court erred in refusing to give the 2d and 3d instructions asked by defendant's counsel to the jury.

19 4th. Because the court erred in instructing the jury that if they believed from the evidence that the offence charged in the indictment was committed upon San Juan Island, then the Territory had proven the offence to have been committed in Whatcom County, as charged in the indictment.

5th. Because the court erred in admitting evidence, and permitting it to go to the jury, shown by the record to have been admitted over the objection of defendant's counsel.

6th. Because the verdict is not warranted by the evidence, and is against law and the weight of the evidence.

7th. Because the evidence shows that the homicide was not committed, as alleged in the indictment, in Whatcom County, but that the same was committed upon the Island of San Juan, a tract of country not within the jurisdiction of the courts of Washington Territory, and not forming any part of Whatcom County.

20 CLARK,
Att'y for Pris., Charles Watts.

The following is a true, full, and complete copy of the demurrer to the indictment referred to in the foregoing record as it appears on file in this office, viz:

District court, 3d dist., holding terms at Port Townsend, Feb'y term, A. D. 1872.

TERRITORY OF WASHINGTON } Indictment. Murder.
vs.
CHARLES WATTS. }

Charles Watts, the said defendant, in his own proper person now comes into open court here, and hearing the said indictment read, says said indictment and the matters therein contained and set forth are not sufficient in law, and that said Charles Watts is not bound by the law of the land to answer the same, and this he is ready to verify.

21 Wherefore, for want of a sufficient indictment in this behalf, the said Charles Watts prays judgment, and that he may be discharged from the said premises in the said indictment specified.

WYCHE & CLARK,
Att'ys for Def't.

22 This and the following 34 pages is a true and correct copy of all the testimony produced and offered to the jury upon the trial of the cause, as appears by the record and certificate of the judge on file in this court, viz:

TERRITORY OF WASHINGTON } Indictment for murder.
vs.
CHARLES WATTS. }

This cause being called for trial, H. A. Swift, W'm Yates, Rob't Williams, Reuben Vizer, Alexander Bowers, Cha's Stephens, C. W. Beal, Thomas Dickinson, W'm Alexander, Morris Britt, Henry Stone, and Peter Jump, being duly called, elected, and sworn as a jury to try the cause, the pros. att'y stated the case of the Territory, and att'y Clark that of the defense, as they expected to be able to prove them respectively to the jury, and thereupon the Territory produced JAMES FLEMMING as a witness, who being duly sworn, testified as follows:

I am 29 years of age, and now reside upon Orcas Island. In
23 June, 1869, I was on San Juan Island, working for deceased, Hibbard. Think I went to lime-kiln last day of March, A. D. 1869. Knew Watts from the time I went there. Was there on the 17th of June, 1869. Deceased and prisoner were both there that day. There was no trouble between them that day as I know of. I did not see Mr. Hibbard or Mr. Watts both together on that day.

(Diagram of lime-kiln premises here shown to the witness and he explained it to the jury.)

I was up in my room fixing my bed; Watts was on Cutler's bed, as shown by witness to jury on diagram. Mr. Hibbard was in his room cutting tobacco to fill his pipe. I left and went down stairs. As I passed Mr. Hibbard's room, I looked in; saw him at table cutting tobacco. I went to the door of the basement that goes into the store-room. I heard a shot in a minute or so more after I arrived at the door. I
24 walked down slowly—the shot was fired in the upper part of the building. After I heard the first shot fired, I went round to the foot of the stairs; as I got there heard the report of two other shots. I saw the smoke of the pistol in the door. Then Mr. Hibbard came running out down stairs with his hands on his face. I caught him at foot of stairs, and he said, "Oh! my God, I am a dead man." I hallowed for

help and took hold of him. He was taken inside of lower building. Hibbard came down stairs after the two last shots, and after I saw the smoke. Watts stood at the head of the stairs with a bottle in his left hand and a pistol in his right. He was pointing the pistol at Mr. Hibbard. Cannot recollect what I said exactly, but think I said "don't" when I had hold of Hibbard. The pistol that Watts had was a four-shooter. Heard three shots fired. Men came and took hold of Mr. Hibbard, and I went for doctor; was gone two hours or more, and when I returned he was lying stretched out on a bed, dead. I saw two
25 wounds in his face, but not the one in his body until next morning. The wounds in his face were, one in the corner of his eye, and the other on the other side of his face near his nose. There were but the two wounds on his face. The wound on his body was just below the right nipple, and was a pistol-shot wound, the same as the others. He seemed to be in as good health as I had ever seen him, during the day previous to his being shot. He and myself had been cutting wood for the kiln so that fire should be started the next day. The shooting occurred after supper of this day. I have said we were cutting wood. He ate his supper. Watts had been sleeping in the upper part of the house. He (Watts) did not say anything when I called out "don't." There was no person up stairs when I came down but Hibbard & Watts. As I came down stairs, Watts came out of his room, and was standing looking into Hibbard's door.

Cross-ex.:

Said all that I have mentioned took place on San Juan Island.
26 I was up stairs fixing my bed; Watts came into same room. He was at Cutler's bed. I did not say that Watts was after "salts." Cutler had salts.

(Showed from diagram the doors and beds.)

But one pair of stairs coming down out of the building. I do not know the size of the room in which Hibbard was; it was a pretty large room. It may be 20 feet square—2 bed-rooms cut off. Hibbard came down same stairs as I did. I don't know the distance from door to table where Hibbard was. Don't know how many chairs. Don't know there was more than one; know there was another table in the room. The 2d table had books, papers, and a water-jug on it. I don't know anything about thread or strings being upon 2d table. It was a heavy bar-room chair in which Hibbard was sitting. I did not go up to the room that night. I was talking with John DeLute; standing not sitting. I said let us go to cooper-shop, and put up some barrels. The door in which I was standing was in center of main building. There were a half dozen persons in the store-room. John Lewis was there and
27 another man, Mathews. To what I said to DeLute, he said no; was too tired. Just as he said this, I heard the shot. The time was not over five minutes, more or less, after I came down stairs. I think about five minutes. I heard overhead a rumbling noise as a chair moving. Hibbard had a shoe that squeaked, and I heard it, and a noise like shoving a chair. If you were paying particular attention, you might hear persons walk in the upper room from where I was. I don't know that I could hear ordinary conversation; one window in room, possibly more; I think but one; the floor was common tongued and grooved floor. I was standing in the door. If there had been a row, I think I would have heard it; would not need to be a very big row. When shot was fired, I made remark, Boys, there is a shot up stairs. The two other shots were just as I got to the foot of the stairs. The shots were soon

after each other; as soon as I heard shots, I hallowed and run. The shots were in quick succession. It was a very short time between the 1st and 2d shots.

As soon as I got to foot of stairs, I saw smoke coming out of door. I heard last shot more distinctly than first one. I don't know what
28 parties were doing when 1st shot was fired. I think they were near the door. Hibbard came out the door. Hibbard and Watts seemed both jammed in the door. Mr. Hibbard was coming out and passing Watts, who stood in the door. I said I did not see them in the room together. Hibbard was passing with his hands over his face. When I saw Watts in room, I did not speak, nor did he. Mr. Watts was a partner in the concern. I was at work for the co'y. Watts, as he stood in the door, not say anything. I do not know that Hibbard had a pistol. All hands were at supper together. It was in the evening, shortly after supper, on the 16th or 17th of June, 1869, at the dwelling-house of the Lime-Kiln Co'y, on San Juan Island.

No re-ex.

THOMAS SUTCLIFFE, produced & sworn for the Territory, testified as follows:

I was a cooper in the employ of Hibbard & Co., on San Juan Island, in 1869. Hibbard was superintendent of the works. I did not reside at the house; did not eat supper there; lived ¼ of a mile away. Mr. Hibbard was not alive when I got down. I was informed Hibbard
29 was killed, & came down to house where he was; found him lying on a bed. He had 3 shots in his body, as I supposed, from the looks of them, from a pistol. One on left side of his face, one in the corner of his eye, the other on his right breast. Mr. Cutler and Watts were both sitting in the room when I got there. I went to Hibbard and felt of his pulse, and found, to the best of my knowledge, he was dead. I asked Watts if he had done this, and he said, Yes, but I am sorry for it. I then made preparations to go to Victoria. It was between ½ past 6 & 7. It was on San Juan Island, included, as I supposed, in Whatcom Co'y. The body was in the house in which he lived on San Juan Island; saw no pistol in Hibbard's possession. I knew that Watts was the owner of a pistol; same as described by other witnesses; was a 4-shooter, Sharp's. At the time of the occurrence, Watts was not stopping at the house at all, but at Fuller's, 3½ or 4 miles away. I think Watts was at dinner. Was there in the afternoon. Saw him several times. At the time of the occurrence, Watts was at work for co'y; went home nights.

30 Cross-ex.:

Watts said he had done that but was sorry for it. He did not say why he did it. I asked him if he had done it, and he answered as above. I did not ask him why he did, nor did he say. Hibbard could not have been dead long when I got there. He was warm. I examined his wounds; I judge they were pistol-wounds, from wounds I have seen before. Cartridges small, about the size of buck-shot. I did not see the balls taken out. I can't tell whether those wounds were made by balls from pistol or musket. I have seen him have a pistol in his possession, of the description above. I understood he owned it by his declaration. I have seen him and Hibbard shooting at a mark. Hibbard had one quite like it. I did not probe the wound. The man was dead, and I supposed he died of the wounds. I am not a physician or surgeon. I could not swear that he did not die of apoplexy.

No re-ex.

EDGAR JAMES ZEIGLER, produced and sworn for pros., testified:

Am 33 years old. Am a cooper. Was employed by Hibbard & Co'y in 1869, on San Juan Island. Was there in June. Am acquainted with prisoner. Was there June 17th, 1869.

31 Ques. State what you know, if anything, about the killing of Mr. Hibbard on San Juan Island.

(Objected to; obj. overruled. Ruling excepted to & ex. allowed.)

Ans. I was there at the time in the cooper-shop; was informed of the shooting and went over to the house; found Hibbard sitting on the bed. Mr. Cutler came over the same time I did. I sat down on one side of Mr. Hibbard and Cutler on the other. Mr. Watts was there. Hibbard got very weak and fell over into my arms. At that time Mr. Watts got up and walked out of the door. I got up and followed him over to the cooper-shop. When I got to the shop there was a man still working there by name of Morison. He asked me what was the matter. I said Hibbard was shot. Mr. Watts said yes, he had shot him and was sorry for it. Said Hibbard called him a thieving son of a bitch, or a lying son of a bitch, and started for his rifle. Watts then went over to the house again, and sat down on the bench on the outside of the building. I asked him for his pistol, and he gave it to me. I

32 asked him if he had any more weapons, and he said not but a pocket-knife. The pistol I gave to Mr. Cutler. Mr. Hibbard had a rifle. Mr. Cutler and myself both went and examined the rifle. It was hanging in the rack half cocked, with no cap on it; was in the place where it usually was kept. The distance from the house to cooper-shop is 70 to 80 y'ds. I do not know how long he lived; when I came back he was dead. It was not over an hour. There were two wounds in the face. I was present at time. Angry words passed between deceased and prisoner two or three days before shooting.

Ques. What was said on that occasion?

Ans. Mr. Watts came in the dining-room and asked Hibbard if he tore down that bench. Hibbard said he did. I am not certain what the reply was; called harsh names; don't remember what it was. Hibbard said it was no place for a talk of that kind. Hibbard was not angry and violent. Watts was excited. He talked in an angry manner. The pistol I took from Watts was a small pistol, 4 chambers, 3 barrels empty; the 4' cartridge had a mark on it as though it had been snapped

33 and did not go. There was blood on the floor 2½ feet from door; did not notice but one place, about 5 in. in diameter; was in liquid state, not dry.

Cross-ex.:

When I first saw Hibbard he was not in a condition to talk. Watts said nothing about in room in my hearing. At cooper-shop Watts said he had shot him and was sorry for it. Watts was very cool, not angry. He said Hibbard called him a lying son of a bitch, or a thieving son of a bitch, and started for his rifle. He said nothing about Hibbard's raising a chair. I was some excited myself. That is all I heard in cooper-shop. I never heard Watts say anything more about it. He (Watts) offered no resistance to giving up the weapons. The table-talk same as on direct examination. Mr. Watts had been to dinner, and went out and came in, and Hibbard was eating dinner. I saw him at the table that day. Hibbard usually sat at head of table & Watts at his left. I do not know whether Hibbard was at the table when Watts left or not.

He got up and went out, and when he came in Hibbard was eating. I don't recollect who were in the dining-room except myself, Mr. Hibbard, and Mr. Watts, but there were others. I was at table week pre-
34 vious to that every day. Was there from day of angry words until Hibbard died. The bench referred to was one me and Watts had been putting up in cooper-shop, a cooper's work-bench. It was for Mr. Watts or myself to work on. We did not work together. He was to take the new one, or I. It was taken down in the forenoon of the angry word day. It was there when I started for dinner. Watts was just started or was starting to learn the trade. I heard nothing about it from parties till Hibbard tore it down.

Ques. Was Hibbard about when bench was set up, or did he know of it?

Ans. I did not know whether Hibbard knew the bench was being put up or not. I supposed he did. He came into the shop once or twice a day. Hibbard appeared to be very cool about the bench matter. Was not dictatorial. Mr. Hibbard was the man that hired me. Watts was one of the co'y. The rifle hung near the door going out of the room.

Re-ex. by Bradshaw, att'y for T'y:

Mr. Hibbard was superintendent over all the premises as well as the cooper-shop; Watts had no superintendence in shop or out of it as
35 I am aware of. I can't say for certain whether Watts was there from day of angry words to day of homicide. From foot of stairs to door of store-room it was 40 feet.

Pros. att'y here offered in evidence the statute organizing the county of Whatcom, page 291, also Stat., 1867, page 44; also White & Stevens' map to show that the Island of San Juan is in Whatcom County. The introduction of these statutes & this map in evidence was objected to by counsel for prisoner as incompetent. Objection overruled. Ruling excepted to, and exception allowed, and the said statutes and map were now permitted to go to the jury as evidence. Territory here rested.

EDGAR JAMES ZEIGLER was produced and examined by prisoner and testified as follows:

I came to San Juan Island some time in April, A. D. 1869. Hibbard came over with me from Victoria. He employed me through my
36 father. Mr. Watts was then there working around the kiln. I don't know how long he worked about kiln. I should judge he went into the cooper-shop in the latter part of May. I don't know why he made the change. He was making lime-barrels in shop. He worked at my bench. I supposed he was making them for the co'y. He used my tools. Had none of his own. Just before the bench was torn down I believe he got some tools from Victoria of his own. I don't know whether the tools were in shop. There was not room for two to work to advantage at my bench. I don't recollect whether the bench was entirely completed or not. I don't recollect whether Hibbard saw the bench when we were putting it up or not.

M. Hibbard was foreman. I did not recognize any one else as foreman. Showed how bench was put up. It was constructed in a proper place and manner. I saw bench down and on floor. I don't know how it was taken down.

37 I don't know whether we went to dinner together. Hibbard did not say why he tore it down. I don't recollect any conversation about Watts working about the cooper-shop. I can't say that Watts worked in the shop after the bench was torn down. I do not recollect of

seeing Hibbard and Watts in conversation before the table-talk. Witness gave the names of persons working there. Robert Williams was there; Kitty was not there on day of angry words. I don't know for certain where Kitty was stopping at time of homicide. I think she was at Fuller's; she had gone there before. I knew Mr. Watts from April until 16th of June, A. D. 1869. I don't know what his reputation was as a peaceable and quiet man.

Cross-examination by Bradshaw:

38 I do not recollect that we were more than a half of a day on this work-bench. I don't know whether he was working by the month or not. He was not a cooper; had not the appearance of one. I was to show him how to work as understood between Watts and myself. I don't know whether Hibbard objected or not to the bench being built. Mr. Williams was not, I believe, there at the time of the homicide. I don't know how long Kitty had been stopping at Fuller's when the homicide took place.

The prisoner, Mr. CHARLES WATTS, now offered himself as a witness in his own behalf, and being first duly sworn, testified as follows:

I was acquainted with Hibbard. I first met him in Victoria. I first met him last January 3 years ago. We went into business together about 1st of March, 3 years ago. I' was the manufacture of lime on San Juan Island. There were four of us interested. Hibbard, Bailey,

39 Huntington, and myself. I had one-eighth ($\frac{1}{8}$) interest. I first got $\frac{1}{8}$ interest about 1st of March.

Ques. How came you to go there to work?

Ans. I went there by agreement between myself and partners; my money was invested there. I went there to work as a hand; went shortly after I bought in—worked there about 3 months. I bought in about 1st of March and about 1st of June I knocked off work.

Ques. State what caused you to quit work on the first of June.

(Objected to; objection sustained; ruling excepted to, and exception allowed.)

Ques. State whether or not on the 1st of June there was any difficulty between you and deceased.

(Objected to; objection overruled.)

Ans. There was a difficulty between us about a pole on lime-kilns; just words, not blows. I knocked off work and staid about the premises. I went into the cooper-shop then, and tried my hand at making lime-barrels.

40 I worked there 3 or 4 days, just seeing what I could do towards making barrels. I found out that I could make a passable lime-barrel. Mr. Bailey & Huntington came over after I had been at work 3 or 4 days. We agreed that I should make lime-barrels the same as others. I don't know how the coopers were at work. I was to have same as others. I did not work any on that agreement, other than to make a bench & get some tools. I had the bench nearly completed by noon. Mr. Hibbard tore it down. I asked Hibbard if he tore it down. He said he did. I told him he was a damned scoundrel. He said it was no place to settle the matter. Yes, I told him, I wanted to settle it before all the mem. I think he said Bailey & Huntington would be over in a few days. I waited for them to come over before I did anything more. I had an Indian women living at Mr. Fuller's and went down nights and came back in day-time. Nothing else was said between me and Mr.

41 Hibbard about the work-bench. I was down every day after that until Hibbard's death. I spoke to him common civilities at table.

I was at cooper-shop most of the time. Hibbard was at lime-kiln. I was at supper with him on the day of his death. I saw him after supper, after I had finished my supper. I went out upon the verandah. Mr. Cutler came out and I asked for some salts. He told me to go up at the head of his bed, I would find a box there—to help myself—to take what I wanted. I went up and found the salts in the box. It was in men's sleeping apartment. Showed where Cutler's bed was by diagram. After I found the salts, I went into room where Hibbard was to get string and paper to bind up the salts. While I was doing up the salts I asked Hibbard which of the two pitchers belonged to the Indian woman, and he said neither. He said that she did have some ware when she first came there, but it was all broken up but a piss-pot cover, and that I could take that if I wanted it. I told him I did not want that. I saw that he was getting angry, and I started to go.

42 I got as far as the door and he stopped me, calling me by name, and said he wanted me to bring back some sheets I had taken away. I told him I had not taken any sheets away. He persisted that I had. I said I had not, and he says if you say you did not take them away, you lie like hell. I told him I had not taken them away, but if he the Indian woman had taken them I would make her bring them back. He said she had taken some things away, a carpet-bag and pillow-slips. Said he cared nothing about them, but he did not want her to come on place any more. I saw he was mad, and I saw the bottle of salts on the table. I stepped to the table to get the bottle of salts to take them back from where I got them from. When I got to the table to get the salts, he picked up the chair to strike me with it. When he picked up the chair to strike me with it, he said you damned lying

43 son of a bitch. Before he could strike me I pulled out my pistol and forced upon him. It was a cane-bottom chair; was not heavy as one near him. When I shot he came towards me and I thought he was going to get hold of me. When the last shots were fired I thought he was reaching for his rifle. He was right close to me—no words then passed. When I fired the last shot he fell right at my feet and close to the door. He got up immediately and went down stairs. I had the bottle of salts in my hand. I carried them back into the room where I got them from, and came out on the little platform at the head of the steps. By that time Mr. Hibbard had got down the steps, and met Flemming, De Lute, and Walker. Then he spoke to them and said either that he was a dead man or was shot. I was afraid he would go down in lower room and get a gun, and shoot me, and I came down the steps and ran off a little distance and stopped.

There were guns in the lower room. As soon as I stopped I

44 saw one of the men, and I called him to me. I asked him if Hibbard was dead. He said no, he is not dead, but he did not think he would live. We went into the house, then, where he was. When I got in I saw Hibbard sitting on the bed; several men in the room. I don't remember who they were. Mr. Cutter asked me if I had done that. I said I did, and was very sorry for it, but could not help it. There was considerable excitement among the men. I went over to the cooper-shop. Zeigler went with me. We found Mr. Manson in there. He had not been over to house.

Ques. State what your feelings were towards the deceased from the time you entered the room until you fired the first shot, and what were your apprehensions, if any, from the time you say he first raised the chair?

(Objected to. Objection sustained. Ruling excepted to, and exception allowed.)

45 Ques. What was his appearance at the time he raised the chair?

(Objected to. Objection sustained. Ruling excepted to, and exception allowed. But the court told counsel he was entitled to everything Hibbard done or said at the time.)

Hibbard was 4 or 5 feet from me when he raised the chair.

(Showed how Hibbard did, by taking hold of chair. Said you lying son of a bitch, and took hold of the chair.)

Ques. State whether or not you believed yourself in great danger of great bodily harm from Hibbard at the time you fired the first shot.

(Objected to. Objection sustained. Ruling excepted to, and exception allowed.)

Court told counsel that he could prove every act done and every word spoken.

Ans. Mr. Hibbard was a man weighing about 160 pounds. He
46 was stronger than I was at the time. My only object in going into the room was to get paper and strings to do up salts, and to get the pitcher the woman had asked me to bring. The tone of the talk between Hibbard and myself was not loud except when he said I had lied like hell. The words son of a bitch were spoken through his teeth more, not loud. Pistol was a small 4-barrel sharp-shooter; carried ball about the size of buck-shot. I had owned it about 5 months. I carried it about my person generally. I loaded it every day or two, generally kept it loaded. I had nothing but a penknife beside the pistol at time of shooting.

Ques. State whether you had in your trunk at house, or were at that time owner of a Derringer pistol of large bore.

(Objected to. Objection sustained. Ruling excepted to, and allowed.)

Cross-ex. by counsel for T'y:

47 I owned ¼, Hibbard ⅜ int., in lime-kiln. Hibbard was overseer or superintendent. We worked under his directions. I quit work about 1st of June. I worked at barrels 5 or 6 days after 1st, or to 5th or 6th of June. I was working on kiln when I quit. Hibbard was there superintending. I was fixing a pivot or pole in centre of kiln when Hibbard found fault with me. There were some obstructions in the way. I asked for a saw; he wouldn't give it. He told me to do it as he wanted it done. I knew it was necessary to do it my way. I wanted to do it my way and he wanted it done his way. I quit—I did not think I could work under him. I was working by the month, for $45.00 and board. I went down to cooper-shop. I did not go to work that day in cooper-shop. I did not go to work until I had made arrangements to make lime-barrels. A week or ten days elapsed. I was practising on lime-barrels. I was shaving hoops.

When I worked I did not work any particular number of hours. I
48 was about the shop. I made the agreement about the 12th or 14th of June, to work in cooper-shop. Made it in house. Huntington, Bailey, & Hibbard were there. He refused to let me have wharf-plank. Refusal was made on the morning I commenced to put up my work-bench. I found Hibbard at table in dining-room. He said he did not want me to make any more barrels. I told him he was a damned scoundrel. (Stated tone of voice by illustration.) Hibbard said this is no place to settle it. Said Bailey & Huntington would be along in a day or two. It must have been about the 15th of June that table-talk occurred—killing two days afterwards. I worked no more in cooper-shop. Was about the premises in day-time, at Fuller's at night.

Left Fuller's very early. I am not certain, but I think I did the morning of the killing. I don't know whether I took breakfast with the rest. I think I was late. I don't remember who was cook. I
49 think I got there at 6 or ½ past six. I was interested and wanted to know how things were going on. I took dinner there on day of homicide. Manson, Zeigler, Brush, Cutler, Walker, John Flemming, and John De Lute were at dinner. I brought my pistol with me, carried it in my right pants pocket. Fuller was there each morning when I left. I could not say when I loaded the pistol preceding the day of the homicide. I never loaded the pistol at Fuller's house. I had it out at Fuller's. When I went to bed laid it on the table, and put it in my pocket in the morning. I had it out there once to shoot an eagle with. I think I was at breakfast that morning. I don't know whether Hibbard was there or not. Hibbard sat at head of table and waited on the table to what was before him.

I saw Hibbard after supper; he did not get through supper 1st. I got through supper 1st; went around porch; stood there till Cutler came around; was waiting for him, (pointed out where Cutler was.) The stairs go down from the room Hibbard was in when shot.
50 The room in which Hibbard was shot was his business room. He kept his books there. It was his table. I did not sleep there nights; had not for 8 or 10 days. My trunks were not in that room, but next one. One of the pitchers was on table where salts were; the other I don't know where. I asked which of the two pitchers belonged to Kitty. He said neither. When I left Cutler, I went up stairs, where he described at the head of the bed. I saw Flemming up there. I said nothing to him and he said nothing to me. I was there ½ minute at Cutler's bed; went from there into room where Hibbard was. Flemming was in the far end of the room, I think; he passed by me; I could not help but notice him. I got bottle of salts and went into Hibbard's room. It was a bottle of salts. I did not see Flemming there. I did not look down to see if any one was in sight. I went into Mr. Hibbard's room. I do not know what kind of paper it was; I think it was newspaper; got a string close by his table. Hibbard was doing something with his pipe; don't think he had it lighted. Think string was
51 twine. I turned out salts, tied them up and put them in my pocket—left pants pocket. I think my right hand was already in pocket. When I was not employed, I had a habit of keeping my hands in my pockets. I took salts in left hand and had bottle in left hand all the time till I put it away. Hibbard said he wanted me to bring the sheets. I might have heard men talking in the room below if my attention had been called to it. Our tone of talk was low. About sheets the same as before. The tearing down the bench excited me more than the talk up stairs. I had my hand in my pocket while I was at the door. The conversation lasted a minute or two; all was over in less than five minutes. I left bottle of salts on the table when I first started to go; it was after he had told me that I lied like hell, I went after the salts. Table is about 4 feet in length, and was 18 or 20 feet from the door. When I walked towards table he did not do or say anything until I reached for salts; then he seized the chair. He did not move otherwise. He attempted to strike me with chair, and I
52 fired on him. The bottle was six inches high and four inches through. Was 1½ teacups full of salts in it. It was a cane-bottom chair—ordinary arm-chair, cane-bottom; not as heavy as one pointed to. He raised it part way up; he got it up 3 feet high before I fired. He called me a lying son of a bitch. I could count 7 or 8 or 9—

counted. My hand was in my pocket at time. I did not take aim. I was about 5 feet away. He then set chair down and put his hand to his breast. 1st shot struck him in breast. As soon as he set chair down he came towards me with pipe in hand; it would weigh 2 or 3 oz. I stepped back & cocked pistol, half way between table and door, when I fired again. This shot took effect in face. I saw it. I fired 3d shot close to door. 2d shot shocked him. I hit him 3d time in face; it knocked him down. He fell at my feet; got up and went down stairs. He went down stairs as fast as usual gait. I came out on platform and went into room and put salts away. I was about center of room when pistol snapped; it was after 2 shots. I cocked it again. He had his hand, when I fired the last shot, reaching for his rifle. The
53 door was open. The rifle was just back of where the door would shut. I don't recollect of pointing my pistol down stairs; did not hear Flemming say don't. I never had anything to do with Hibbard's rifle. There was a large pistol in Cutler's box. There were three men near foot of stairs; they took Hibbard with them. I ran down stairs out of house and a short distance from the house, say 50 y'ds. There was a large boulder where I stopped. I was there a minute or two when one of the men called to me, and I went with him into the house. I was there when Hibbard died; it was 10 or 15 minutes after the shooting.

Re-ex. by Clark:

When I went to get plank to make work-bench, he refused me the plank on wharf. I afterwards got another. There *was* 6 chairs in Hibbard's room.

ROBERT WILLIAMS, produced and sworn for defense, testified:

I was residing on San Juan Island in June, A. D. 1869. I had
54 been there a little over two years, I think. I worked 2 or 3 weeks for the lime co. I don't know when I left, but it was six or seven days before this difficulty. I was present at time of talk of tearing down work-bench, at dinner table, between Hibbard & Watts. Hibbard came in and sat down to dinner-table; Watts came afterward and said, Hibbard, was it you that tore down my bench? Hibbard said, Yes. Watts said, I think you are a damned mean man for doing it. Hibbard said, I want you to understand that I am boss about here. Watts said, You know as well as I do that I was to make barrels, and if I only made one a day I was to be paid in same proportion. Hibbard said, That will do; this is no place to settle this difficulty. Something was said about squaw, but I did not stop to listen. I know reputation of Watts as a peaceable & quiet citizen; it was good.

Cross-ex. by pros. att'y:

I now live in Steilacoom. I went there in fall of 1869 or spring
55 of 1870; think was in fall of 1869. It was 2 or 3 weeks that I was at lime-kiln.

Defense here rested.

THOMAS SUTCLIFF, recalled by pros., in rebuttal, testified:

I went up into the room and made an examination of it. It was ½ or ¾ of an hour after the homicide; Cutler went in the room with me. There were 6 cane-bottom chairs, similar to the one I am sitting in. I think Hibbard would weigh from 150 to 160 pounds.

No X-ex.

Mr. FLEMMING, recalled by pros., testified:

Mr. Hibbard had a pipe and his knife and some tobacco when he came down stairs. His hands were up to his face.

Cross-ex.:

He came down stairs as fast as he could come. It was plug-tobacco, showing size of plug. It was a small pocket-knife, shut. I had him by the shoulders.

Mr. ZEIGLER, recalled by pros., testified:

56 I did not notice anything in Hibbard's hands. I was not there.

Cross-ex.:

I first saw Hibbard sitting on bed; saw him not over 15 seconds.

Mr. SUTCLIFF was again recalled by pros., by permission of the court, and testified:

I saw Hibbard's pipe after the homicide, about ½ or ¾ hour after. It was on bed by Hibbard; was bloody. I saw knife and piece of tobacco in room Hibbard died in, on the floor.

Cross-ex.:

I recognized the pipe and knife as Hibbard's; they had blood on them; so did the tobacco. I don't know how they came in the room.

Here the testimony closed.

I hereby certify that the foregoing thirty-five pages contains a full and complete statement of all the testimony given to the jury on the trial of the foregoing cause.

O. JACOBS,
Chief Justice of Washington Territory,
and Presiding Judge of the 3d Judicial District Court.
Holding Terms at Port Townsend for Jefferson et al. Co'ys.

57 After the close of the testimony, and before the argument of counsel, defendant, by his counsel, asked the court to instruct the jury as follows, to wit:

District court, 3d dist. W. T., holding terms at Port Townsend, for Jefferson et al. Co'ys.

WASHINGTON TERRITORY
vs.
CHARLES WATTS. } Indictment for murder.

Charles Watts, by his att'y, Clark, moves the court to instruct the jury herein—

1st. That before they can find the prisoner guilty as charged in the indictment they must be satisfied from the evidence that the offence was committed in Whatcom Co'y.

2d. That proof that the offense was committed on San Juan Island does not sustain the allegation of the indictment that the offense was committed in Whatcom Co'y.

3d. That if the proof shows that the offense charged in the in-
58 dictment was committed on San Juan Island, then the verdict of

the jury must be for the defendant, because at the time of the alleged commission of the offence charged in the indictment San Juan Island was not within the civil jurisdiction of the courts of Washington Territory.

CLARK, *Att'y for Def't.*

The first of the foregoing instructions asked by defendant's counsel was given to the jury by the court, and the 2d & 3d instructions asked were refused to be given by the court to the jury.

To the refusal of the cour' to give the 2d & 3d instructions asked to the jury, defendant, by his counsel, excepts, and his exception is allowed by the court.

The following eight pages contain a full, true, and correct copy of the instructions, and all the instructions given to the jury in this cause, except the instruction marked No. 1, asked to be given by defendant's counsel, to wit:

59 *Instructions by the court.*

What the prosecution must prove:

1st. That Augustine Hibbard came to his death by violent means.

2dly. That the prisoner was the guilty agent of that violent death.

On this point you will have no difficulty. The prisoner virtually admits the killing and where it was—that is, on San Juan Island.

3dly. It must appear to have been done in Whatcom County. Upon this point you will not have much difficulty.

Excepted to, & ex. allowed. { The statutes and maps introduced on evidence on this point. If you are satisfied from the statute boundaries read and pointed out to you upon the map that such boundaries include San Juan Island, that is sufficient.

If one human being has been killed by another human being it is either—

1st. Murder in the 1st degree; or,

2dly. Murder in the 2nd degree; or,

60 3d. Manslaughter; or,

4th. Justifiable homicide,

The 1st, or murder in the 1st degree, is of 3 kinds or classes.

1st class is where the killing is done purposely and of deliberate and premeditated malice.

2dly. Where the killing is done in the perpetration or attempt to perpetrate the crime of rape, arson, robbery, or burglary. In these cases the law implies malice.

3dly. Where the killing occurs by the administration of poison, or causing it to be administered. In this class malice is implied.

The 2d class of murder is where the killing is done purposely and maliciously, but without deliberation and premeditation.

The principal difference between murder in the 1st degree and murder in the 2d degree is that one is done with deliberation, and

61 the other without it; or, in other words, there is an intent to kill formed in the mind for some time previous to the killing; in the 2d there is no intent to kill, but it springs into existence on the occasion of the killing.

Now, malice is an ingredient of all these kinds or classes of killing. What it is; 1st, expressed: 2dly, implied, (3d. Greenleaf, page 14, notes 2 & 3, secs. 144, 145.)

The condition of the prisoner immediately after is an important consideration as to malice, and as to the fact whether the offense was the lower offense of manslaughter.

3d. The 3d class of killing is manslaughter, and that is of two kinds; voluntary and involuntary. When the killing is done in sudden
62 heat of passion and under great provocation it is voluntary. It is involuntary when the person commits or attempts to commit an unlawful act not amounting to any of the felonies named, rape, arson, robbery, or burglary. The distinction between murder and manslaughter is the want of malice, either express or implied.

4thly. Justifiable homicide. It is not necessary for me to go into all the distinctions upon this subject, but only that phase of this subject presented by the evidence in this case. If life is taken in self-defence the facts must show, 1st, either that the slayer retreats to the wall, or as far as he could retreat before he struck the fatal blow, or fired the fatal shot, and that the danger was imminent, pressing, and immediate, or, 2ndly, that the assault was so impetuous and dangerous that there would be imminent danger to life, or great bodily harm if he
63 retreated at all. 3dly. In either case you must be satisfactorily convinced from all the well-founded facts and circumstances in the case that the danger to life was imminent, pressing, and immediate, or that the danger of great bodly harm was imminent, pressing and immediate. In other words the killing must be a necessity either real or apparent, to prevent death or great bodily harm.

Excepted to and exception allowed.

The prisoner has a right to act on the circumstances as they appeared and are proven, provided you are convinced that those circumstance as proven showed, in appearance, imminent, threatening present and immediate danger to life, or great bodily harm. You are the judges, not the prisoner. Illustration—a plowman.

You must be convinced that the instrument by which the kind of danger which I have been describing was threatened, was
64 either a deadly weapon, or, at the very least, that its use was eminently dangerous to life or great bodily harm.

A common assault with the fist will not do, nor with a stick, nor of anything the use of which is not eminently dangerous to life or limb.

Words, however insulting, will not in law justify a common assault and battery.

If you are convinced that Hibbard applied opprobrious epithets to the prisoner, and even mistreated him in manner, and foiled all his plans, or recalled all agreements made with him, that is no justification for a killing.

You are the exclusive judges of the testimony.

65 The last legislature made the prisoner a competent witness. It is a statute-paper in the interests of humanity.

Its object was not to shield the guilty, but to protect the innocent. Whatever we may think of its wisdom, it is our duty to enforce it in good faith so as to secure its object.

In considering such testimony you must consider the tremendous motives that influence a witness, in such a position, to misstate, color, or falsify the facts.

This man is swearing for his life; but still, if the testimony, under the circumstances, carries conviction to your minds, you are not at liberty to disregard it. Look at it carefully, consider it cautiously; look at its corroborations in important points.

Possibly it may harmonize in non-essentials.

66 REASONABLE DOUBTS DEFINED.

You will 1st consider whether the prisoner is guilty of murder in the first degree.

2d. If of murder in the 2d degree.

3d. Of manslaughter.

4th. Whether he is guilty at all or not.

To the instructions of the court contained in the 17th, 18th, 19th, 20th, 21st, 22d, 23d, & 24th lines on the 1st page of the foregoing instructions, and also to all of the instructions of the court contained on the 5th page, in the first 23 lines thereof after the first line, defendant, by his counsel, excepted, and his exception was allowed by the court.

67 And afterwards the following entry appears of record, to wit:

March 11th, 1872. Monday, 13th judicial day.

TERRITORY OF WASHINGTON *vs.* CHARLES WATTS. } Indictment. Murder in the 1st degree.

Sentence and judgment.

And now, on the eleventh day of March, A. D. one thousand eight hundred and seventy-two, the defendant, Charles Watts, being present in open court, and having been asked if he had anything to say why sentence should not now be pronounced upon him on the verdict of the jury herein rendered, and no legal cause being shown why judgment and sentence should be longer delayed, it is considered and adjudged by the court that you, Charles Watts, are guilty of murder in the first degree, and that you suffer death; that you be taken from this place, by the sheriff of Jefferson County, Washington Territory, to the jail of
68 said county, and there confined in prison until the third (3d) day of May, in the year of our Lord one thousand eight hundred and seventy-two; that on that , between the hours of ten o'clock a. m. and four o'clock p. m., you be taken from the prison, by the sheriff of said county, to some convenient place of execution therein, and then be hanged by the neck until you are dead, and may He who gave you being have mercy on your soul.

TERRITORY OF WASHINGTON,
County of Jefferson, 3d judicial district, ss:

In the United States district court of the 3d judicial district of Wash. T'ry, holding terms at P't Townsend for Jefferson et al. co'ys.

TERRITORY OF WASHINGTON, PL'FF, *vs.* CHARLES WATTS, DEF'T, CONVICTED FOR MURder at the Feb'y term, A. D. 1872.

Præcipe for writ of error.

69 The judgment upon which the defendant, Charles Watts, wishes to bring his writ of error is that of death for murder.

The defendant assigns for error—

1st. The overruling by the court of his objection to the grand jury who found the indictment herein.

2d. The overruling by the court of his demurrer to the indictment herein filed.

3d. The court erred in admitting testimony showing the commission of a homicide on San Juan Island over the objection of defendant's counsel, as proof of such homicide committed in Whatcom County, as charged in the indictment, and in admitting White & Stevens' map and the statute of Washington Territory, or either of them, as proof that San Juan Island was within Whatcom County.

70 4th. The court erred in admitting other testimony shown by the record to have been admitted over the objection of defendant's counsel.

5th. The court erred in refusing to give the second and third instruction to the jury asked by defendant's counsel, or either of them.

6th. The court erred in instructing the jury that proof of the killing on San Juan Island was proof of the killing in Whatcom County, as charged in the indictment.

7th. The court erred in instructing the jury that the statute of Washington Territory and the map shown by the record to have been admitted in evidence were competent proof that San Juan Island was in Whatcom County.

8th. The court erred in instructing the jury that if they believed,

71 from all the facts in the case, there was no imminent and pressing danger to life or great bodily harm to the prisoner at the time he fired the fatal shot, they should disregard the convictions or impressions of the prisoner upon that point at the time of the firing.

9th. The court erred in overruling the motion of defendant's counsel for a new trial and in arrest of judgment.

The writ of error will be prosecuted at the next term of the supreme court of Washington Territory.

The clerk of the court will issue, under the seal of said court, notice to the pros. att'y, Cha's M. Bradshaw, esq., of the filing of this precipe.

Dated at Port Townsend, this 14th day of March, A. D. 1872.

FRANK CLARK,
Att'y for the Prisoner.

72 TERRITORY OF WASHINGTON,
County of Jefferson, 3d Judicial District, ss:

To Cha's M. Bradshaw, esq., pros. att'y for the 3d judicial district of Washington Territory:

SIR: In the case of the Territory of Washington vs. Charles Watts, tried in the United States district 3d judicial district of Wash. Ter'y, holding terms at Port Townsend, for Jefferson et al. co'ys, at the February term, A. D. 1872, you are hereby notified that Frank Clark, attorney for Charles Watts, defendant in the said cause, has filed a precipe for a writ of error for a hearing of said cause at the next term of the supreme court of Washington Territory, at Olympia.

Witness my hand and the seal of said court, holding terms at Port Townsend for Jefferson et al. co'ys, this 14th day of March, A. D. 1872.

[COURT SEAL.] JAMES LEAVY, *Clerk.*

73 Due and legal service of the foregoing precipe for a writ of

error in the cause of Washington Territory vs. Charles Watts is hereby acknowledged.

C. M. BRADSHAW,
Prosecuting Attorney in and for the 3d Judicial District of Wash. Territory.

Dated, Port Townsend, W. T., this 14th day of March, A. D. 1872.

In the United States district court of the 3d judicial district of W. T., holding terms at Port Townsend for Jefferson et al. Co'y's.

TERRITORY OF WASHINGTON, PL'T'FF,
vs.
CHARLES WATTS, DEF'T. } Indictment for murder.

Tried at Feb'y term, A. D. 1872.

Due and legal service of the notice of the filing of a precipe for a writ of error to the supreme court of Washington Territory by the defendant in the above-entitled cause is hereby acknowledged. I also hereby acknowledge service of a notice that an application will be made by
74 the defendant to the Hon. O. Jacobs, ch'f justice of Washington Territory and presiding judge of said court, for the allowance of said writ of error, and the granting of a supersedeas therein on the 3d day of April, A. D. 1872.

C. M. BRADSHAW,
Pros. Att'y for 3d Jud. Dist. W. T.

Dated March 23d, 1872.

In the United States district court of the 3d judicial district of Washington Territory, holding terms at Port Townsend for Jefferson et al. Co'y's. February term, A. D. 1872.

TERRITORY OF WASHINGTON, PL'T'FF,
vs.
CHARLES WATTS, DEF'T. } Indictment for murder.

TERRITORY OF WASHINGTON,
3d Judicial District, ss:

And now, at chambers in said district, the defendant in the above-entitled cause, who was tried, convicted, and sentenced to be executed on the 3d day of May, A. D. 1872, at the last February term of said court, comes and by his attorney, Frank Clark, moves the court for
75 the allowance of a writ of error herein, and that a supersedeas may issue to prevent the execution of the defendant as adjudged by said sentence, and commanded by order of execution, issued thereon; and it appearing to the satisfaction of the court that a precipe for a writ of error has been duly filed with the clerk of the court, by Frank Clark, attorney for defendant, and that due notice thereof has been given to the pros. att'y of said 3d judicial district of the filing of said precipe for a writ of error, and that due and legal notice of this application has also been given to said pros. att'y, Bradshaw.

Now, therefore, in consideration of the law and the premises, it is now here considered by the court that a writ of error be, and the same is hereby, allowed as prayed for to the next regular term of the supreme court of the Territory of Washington, and the clerk of the said 3d judi-

cial district court holding terms at Port Townsend for Jefferson et al. co'y's is hereby directed to issue to the sheriff of Jefferson County a
76 copy of this proceeding and order; and the said sheriff is directed to stay the said execution, and him the said Charles Watts safely keep, subject to the further judgment of this or the said supreme court.

Dated and given under my hand at Seattle, in said district, the 3d day of April, A. D. 1872.

O. JACOBS,

Chief Justice of Wash. Try, and Presiding Judge of said court for the 3d Judicial District of W. T. holding terms at Port Townsend.

77 To whom it may concern:

I hereby certify that the foregoing seventy-six (76) pages contain a true, complete, and correct copy of all the record entries as they appear of record of the September term of the United States district court of the 3d judicial district of Washington Territory, holding terms at Port Townsend, for Jefferson, Clallam, Island, and Whatcom Counties, for the year A. D. 1871, that pertain to the regular or special panel of grand jurors for that term of said court; also a full, complete, and correct copy of all the record entries shown by the records of said court in the case of Washington Territory vs. Charles Watts, charged by indictment of murder in the first degree, and who was tried, convicted, and sentenced to be executed, at the February term of said court, A. D. 1872; also a true, complete, and correct copy of the indictment and the endorsements thereon, and of all the motions and pleas filed and entered in the case, with the rulings of the court, and exceptions made by counsel to
78 the ruling made thereon, which were allowed by the court; also, a full, complete, and correct copy of all the testimony offered on the trial of the cause, together with the exceptions taken and allowed by the court to its rulings, upon the admissibility of testimony, and also of all the charge or instructions of the court given to the jury, and of the instructions asked by defendants' counsel to be given to the jury, and of all the exceptions taken by counsel to the said charge of the court, and of the refusal of the court to give instructions as asked by defendants' counsel that were allowed by the court, and of the allowance of the writ of error by the court, and of the precipe for a writ of error on file in the cause, fully as they appear by the records of this court.

In testimony whereof I have hereto set my hand and affixed the seal of said court this 25th day of November, A. D. 1872.

[SEAL OF DISTRICT COURT.] JAMES SEAVEY, *Clerk.*

79 In the supreme court of Washington Territory.

At a regular term of the supreme court of Washington Territory, begun and held at Olympia, on the second Monday of December, A. D. 1872, and the ninth day of said month, before the honorable O. Jacobs, Roger S. Greene, and J. R. Lewis, esquires.

WEDNESDAY, *December 18th*, 1872.

CHARLES WATTS, PLAINTIFF IN ERROR,
vs.
TERRITORY OF WASHINGTON, DEFENDANT IN error.

And now comes the plaintiff in error, by Frank Clark, esquire, his at-

ney, and comes the defendant in error, by C. M. Bradshaw, esquire, and this cause comes on to be argued.

THURSDAY, *December* 19*th*, 1872.

CHARLES WATTS, PLAINTIFF IN ERROR,
vs.
TERRITORY OF WASHINGTON, DEFENDANT IN error.

80 Comes now the plaintiff in error, by Frank Clark, esquire, his attorney, and comes the defendant in error, by C. Bradshaw, esquire, and the argument in this cause is resumed.

FRIDAY, *December* 20, 1872.

CHARLES WATTS, PLAINTIFF IN ERROR,
vs.
TERRITORY OF WASHINGTON, DEFENDANT IN error.

And now comes the plaintiff in error, by Frank Clark, esquire, his attorney, and comes the defendant in error, by C. M. Bradshaw, esquire, and the argument of counsel being concluded, the case is submitted to the court.

81 TUESDAY, *December* 31*st*, 1872.

CHARLES WATTS, PLAINTIFF IN ERROR,
vs.
TERRITORY OF WASHINGTON, DEFENDANT IN error.

This cause came on to be heard upon the record on file and the argument of counsel, and the court being fully advised in the premises, it is considered by the court that the sentence and judgment of the district court be, and the same is, in all respects affirmed.

It is therefore ordered and adjudged by the court that the cause, with the opinion of the court be, and hereby is, remanded to the district court of the third judicial district, with directions to fix and appoint a day for the execution of said prisoner, Charles Watts, and order and command the sheriff of the proper county to execute the same at the time and in the manner so fixed.

82 WEDNESDAY, *January* 8*th*, 1873.

CHARLES WATTS, PLAINTIFF IN ERROR,
vs.
TERRITORY OF WASHINGTON, DEFENDANT IN error.

Comes now Frank Clark, esquire, for plaintiff in error, and excepts to the judgment of the court herein, which exception is allowed; and said attorney for plaintiff in error gave notice that he would, for the plaintiff in error, prosecute a writ of error to the Supreme Court of the United States, to review the said judgment herein for error in law, in this, that the court below, that tried said cause, and pronounced said judgment,

had no jurisdiction to try the same, or to make or enter the judgment therein, because the sovereignty of the island of San Juan was in dispute, and was not completed in the United States at the time of the alleged commission of the offence, and was so placed by the Executive and political department of the Government of the United States, of which condition of affairs the court below was bound to take judicial notice.

83 In the supreme court of Washington Territory.—December term, A. D. 1872.

Error from the 3d judicial district of Washington Territory, holding terms at Fort Townsend for Jefferson et al. co'y's.

TERRITORY OF WASHINGTON, PLAINTIFF IN the court below, and defendant in error,
vs.
CHARLES WATTS, DEFENDANT IN THE COURT below, and plaintiff in error.

Judgment for defendant in error confirming judgment of court below of death for murder.

Precipe for writ of error.

The judgment upon which the defendant, Charles Watts, wishes to bring his writ of error is that of the supreme court of Washington Territory, at the December term thereof, for the year A. D. 1872, affirming the judgment of the said 3d district court against the plaintiff in
84 error of death for murder.

Charles Watts, plaintiff in error, assigns for error, as follows:

That the grand jury that found the bill of indictment upon which he was tried, that the said 3d district court that tried the said cause, nor the supreme court to review whose decision this writ of error is prosecuted, had any right or jurisdiction to enquire of, or to try the said charge made in the said indictment upon which the said judgment was made and entered, or to make and enter the said judgment, and to pronounce the said sentence or to do either.

Said courts, nor either of them, had such jurisdiction and power, because—

1st. By the evidence, all of which appears in the record, it is clearly manifest that the offence charged in the indictment, if comm itted at all, was committed on San Juan Island.

85 2d. Because, at the time of the alleged commission o f the offence the said island of San Juan was in dispute, and its sovereignty was conceded by the Government of the United Statesto be in abeyance, and was not absolutely then vested in the United States; and because the right of a nation to extend her laws, either civil or criminal, over any territory only grows out of complete sovereignty an d right of eminent domain; and—

3d. Because, more particularly, San Juan Island, at the timeof the alleged commission of the said offence, was, by a treaty of the United States, on a truce entered into between Gen'l Winfield Scott, commander of the American forces, and Gov. Douglass, commander of the English orces, (at the time under arms, and, by the bayonet at the time, about

to dispute the right of sovereignty and eminent domain of the
86 island of San Juan,) under the joint military occupation of the authorities of the two governments; and because, by the terms and stipulations made for said joint military occupation, jurisdiction of any character over the same for the time being was especially forbade and interdicted from being exercised by any of the courts of Washington Territory; and because the exercise of jurisdiction by said court or courts, or either of them, in the case at bar, is in direct contravention of the convention and truce between the United States and Great Britain, under which the said island of San Juan was occupied at the time of the alleged commission of the offence charged in the indictment, and is therefore contrary to and against the laws of the land.

This writ of error will be prosecuted at the next regular term of the Supreme Court of the United States to convene at Washington, D. C.

87 The clerk of the supreme court of Washington Territory will issue, duly attested, a notice to the prosecuting attorney of the 3d judicial district of Washington Territory of the filing of this precipe for a writ of error. Said clerk will also issue the said writ of error, duly attested, as by law provided, and cause the same to be presented to the judges of the Supreme Court of Washington Territory for allowance, and also to cause due service of the same to be made on the said prosecuting attorney of the said 3d judicial district.

Dated Olympia, W. T., this 11th day of February, A. D. 1873.

FRANK CLARK,
Attorney for Plaintiff in Error.

Filed February 12th, 1873.

JOSEPH H. HOUGHTON,
Clerk.

88 In the supreme court of the Territory of Washington.

CHARLES WATTS, PLAINTIFF IN ERROR,
vs.
THE TERRITORY OF WASHINGTON, DEFENDANT IN ERROR.

To George N. McConaha, esquire, prosecuting attorney of the third judicial district of Washington Territory:

You will take notice that, on this 12th day of February, A. D. 1873, the above-named Charles Watts, by his attorney, Frank Clark, esquire, filed in my office his precipe for a writ of error for the examination in the Supreme Court of the United States of the judgment entered herein at the December term, A. D. 1872, of the supreme court of Washington Territory, affirming the judgment of the district court of the third judicial district of said Territory against the plaintiff in error
89 of death for murder, which writ of error will be prosecuted at the next regular term of the Supreme Court of the United States, to convene at Washington, D. C., upon errors assigned in said precipe.

Witness my hand and the seal of said court, at Olympia, this 12th day of February, A. D. 1873.

{ SEAL OF SUPREME COURT, W. T. }

JOSEPH H. HOUGHTON,
Clerk.

TERRITORY OF WASHINGTON,
Third Judicial District, Jefferson County:

I, George N. McConaha, prosecuting attorney of the third judicial district of Washington Territory, do hereby acknowledge due and legal service of the foregoing notice at Port Townsend, in said county and district, this third (3) day of March, A. D. 1873.

GEORGE N. McCONAHA,
District Attorney for 3d Judicial District, W. T.

90

91 UNITED STATES OF AMERICA.

The President of the United States to the honorable the judges of the supreme court of the Territory of Washington, greeting:

Because, in the records and proceeding, and also in the rendition of the judgment of a plea which is in the said supreme court of Washington Territory before you, between Charles Watts and the Territory of Washington, a manifest error hath happened, to the great damage of the said Charles Watts, as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all
92 things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 12th day of February, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] JOSEPH H. HOUGHTON,
Clerk of the Supreme Court of Washington Territory.

93 Allowed this 20th day of February, A. D. 1873.

O. JACOBS,
Chief Justice Wash. Terr'y.
ROGER S. GREENE,
Asso. Justice W. T.

94 (Indorsed:) In the supreme court of Washington Territory. Charles Watts, plaintiff in error, vs. The Territory of Washington, defendant in error. Writ of error to Supreme Court United States. Filed April 2d, 1873. Joseph H. Houghton, clerk.

95 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the people of Washington Territory and to George N. McConaha, esquire, prosecuting attorney for the third judicial district of said Territory, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1873, pursuant to a writ of error filed in the clerk's office of the supreme court of Washington Territory, wherein Charles Watts is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable , Chief Justice of the said Supreme Court of the United States, this seventh day of August, in the year of our Lord one thousand eight hundred and seventy-three.

ORANGE JACOBS,
Chief Justice of the Supreme Court of Washington Territory.
ROGER S. GREENE,
Associate Justice.

96 Due and legal service of the within citation, by copy, is hereby acknowledged to have been made upon me at Seattle, in the 3d judicial district of Washington Territory, this 7th day of August, A. D. 1873.

G. N. McCONAHA,
Prosecuting Attorney of the 3d Judicial District of the Territory of Washington.

97 UNITED STATES OF AMERICA,
Territory of Washington, ss:

I, Joseph H. Houghton, clerk of the supreme court of Washington Territory, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office, except the writ of error and citation, the originals of which are hereto annexed.

In testimony whereof I have caused the seal of said court to be affixed at Olympia, in said Territory, this 18th day of August, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] JOSEPH H. HOUGHTON, *Clerk.*

(Indorsement on cover:) No. 618. Charles Watts, plaintiff in error, vs. The Territory of Washington. Washington Terr'y sup. court. Filed 28th October, 1873.

Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 89.

CHARLES WATTS, PLAINTIFF IN ERROR,

vs.

THE TERRITORY OF WASHINGTON.

IN ERROR TO THE SUPREME COURT OF WASHINGTON TERRITORY.

BRIEF FOR PLAINTIFF IN ERROR.

The record in this case which is brought up by a writ of error to the Supreme Court of Washington Territory, shows the trial, conviction and sentence of the plaintiff in error, for murder alleged to have been committed on the 17th day of June, 1869, on the Island of San Juan, which is included within the limits of Whatcom county, Washington Territory.

Errors Assigned.

On behalf of the plaintiff in error, it was urged that neither the District Court in which the case was tried, nor the Supreme Court of the Territory, by which the case was reviewed, had any jurisdiction of the offence described in the indictment.

"*Because* at the time of the alleged commission of the "offence the said island of San Juan was in dispute,

" and its sovereignty was conceded by the Government of " the United States to be in abeyance, and was not absolute- " ly then vested in the United States ; and because the right " of a nation to extend her laws, either civil or criminal, " over any territory only grows out of complete sovereignty " and right of eminent domain ; and because, more particu- " larly, San Juan Island, at the time of the alleged commis- " sion of the said offence, was, by a treaty of the United " States, on a truce entered into between General Winfield " Scott, commander of the American forces, and Governor " Douglass, commander of the English forces, (at the time " under arms, and, by the bayonet at the time about to dis- " pute the right of sovereignty and eminent domain of the " island of San Juan,) under the joint military occupation " of the authorities of the two Governments ; and because, " by the terms and stipulations made for said joint military " occupation, jurisdiction of any character over the same for " the time being was especially forbade and interdicted from " being exercised by any of the courts of Washington Ter- " ritory ; and because the exercise of jurisdiction by said court " or courts, or either of them, in the case at bar, is in direct " contravention of the convention and truce between the " United States and Great Britain, under which the island " of San Juan was occupied at the time of the alleged com- " mission of the offence charged in the indictment, and is " therefore contrary to and against the laws of the land

Record, pp. 25, 6.

Since the writ of error was sued out, the Emperor of Germany, to whom was referred the question at issue between the Governments of the United States and of Her Britanic Majesty, as to the north-western boundary line, in pursuance of the XXXVI Article of the Treaty of Washington, has decreed his award, as follows :

" Most in accordance with the true interpretations of the " Treaty, concluded on the 15th of June, 1846, between the " Governments of Her Britannic Majesty and the United " States, is the claim of the Government of the United States " that the boundary line between the territories of Her Bri-

"tannic Majesty and the United States, should be drawn "through the Haro channel."

See Foreign Relations of the United States, 1872, part 2, vol. 5, p. 267.

The Island of San Juan is within the boundaries of the United States as thus defined.

There is left for consideration, therefore, only the question of the status of the island at the date of the alleged offence, to wit, June 17, 1869.

The record contains no proofs of the facts which appear to be relied on to show the want of jurisdiction in the court by which the plaintiff, in error, was tried. Counsel has made careful search of the public records to ascertain to what extent the assertions (hereinbefore quoted) as to matters of public history can be verified by documentary evidence.

He is not able to ascertain that any treaty was ever made, or any stipulations entered into which were attested in any formal way by the signatures of Gen. Scott and Gov. Douglas or any other representatives of the United States and Great Britain.

It is true, however, that an "arrangement" was entered into by Gen. Scott, in October and November, 1859, the particulars of which arrangement sufficiently appear in the correspondance between Gen. Scott and Gov. Douglas, which will be found in Senate Executive Documents, 2d Session, 40th Congress, Ex. Doc. 29, p. 192, *et. seq.*

It does not appear that there was any stipulation whereby the exercise of jurisdiction by the United States was forbade, but there was an admission that the sovereignty of the Island was still in dispute between the two Governments, and a declaration that until the dispute was definitely settled British subjects should have equal rights with American citizens.

This arrangement was approved by the Government of the United States, as is shown by the letter from Mr. Cass, Sec-

retary of State, to Lord Lyons, from which the following is an extract:

"I am now instructed to inform you that the arrangement "entered into by Gen. Scott in the month of October, 1859, "in order to prevent any collision on the Island of San Juan, "between the American and British authorities, pending "the negotiations between the two Governments, was strictly "in pursuance of a previous arrangement, which was made "with Mr. Crampton by the Secretary of State of the United "States, in July, 1855."

Senate Docs., 2d Ses., 40 Cong., 1867–8, Ex. Doc. 29, p. 258.

The substance of this arrangement seems to have been that "until the question of title should be settled, neither party should exclude the other by force nor exercise of complete and exclusive sovereign rights within the fairly disputed limits."

See Mr. Marcy to Mr. Crampton.
Mr. Marcy to Gov. Stevens.
Senate Docs., 2 Ses., 40 Congress, 1867–8. Ex. Doc., No. 29, pp. 144, 145.

As the determination of this case involves the life of the plaintiff in error, counsel has felt it a duty to indicate as carefully as possible, the sources of information concerning the assertions made in the assignment of errors.

NATH'L WILSON,
Counsel for Plaintiff in error.

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NATH'L WILSON,
Counsel for Plaintiff in error.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

CHARLES WATTS, PLAINTIFF IN ERROR,
vs.
THE TERRITORY OF WASHINGTON. } No. 89.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF WASHINGTON.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

CHARLES WATTS, PLAINTIFF IN ERROR,
vs.
THE TERRITORY OF WASHINGTON. } No. 89.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF WASHINGTON.

Brief for the United States.

I.

The record shows no case of which this Court has jurisdiction.

To obtain a standing in court the plaintiff in error should make it apparent upon the record that the Constitution or some law or treaty of the United States is brought in question. (Act of March 2, 1853, c. 90, § 9; 10 Stats. at Large, 176; R. S., 338, § 1911.)

But the alleged errors assigned show no such case. (Record, p. 25–26.)

The agreement (if any were made, which we deny) between General Scott and Governor Douglass was not a "treaty" within the meaning of that act, nor in any

sense; nor a transaction of which this Court will take judicial cognizance.

The word "treaty," in a public law, must be supposed to be used in its legal technical sense.

Only treaties made by the President and Senate are within the meaning of the act of March 2, 1853, and of R. S., § 1911.

"A treaty is a compact between two or more independent nations," made by the power that has charge of diplomatic negotiations. (2 Bouvier's LawDict., 599; 2 Burrill's Law Dict., 996; 1 Kent's Com., [*165,] *et seq.*)

A military commander has not the power here assigned to General Scott; the authority of law, vested in the courts, cannot thus be suspended by any man. (Johnson *v.* Duncan, 3 Martin, (La.,) 531 and 551; Hale's Hist. Com. Law, (6th Eng. ed.,) 42.)

It appears, in the more particular specification of the plaintiff in error, that it is rather admitted that there was no "treaty" but a "truce."

A "truce" implies the existence of war. (2 Bouv. Law Dict., 606, citing Burlamaqui Nat. and Pol. Law, part 4, c. 11, § 1; 1 Kent's Com.*)

But, certainly, the protracted dispute as to our northwestern boundary never culminated in a declaration of war, nor in any conflict of arms; hence, there was nothing for a truce to apply to, even if this Court were burdened with the duty of construing the terms of a truce.

In the prefatory part of the memorial addressed to

the German Emperor, to whom this controversy was referred, (17 Stats. at Large, 874–876,) Mr. Bancroft says: "The long-continued controversy has tended to estrange from each other two of the greatest powers in the world, and even menaced, *though remotely*, a conflict in arms." (Vol. 1, part 5, page 3, Ex. Doc. Ho. of Rep., 3d session 42d Congress, "Berlin Arbitration.")

A *treaty* this Court would be bound to take judicial notice of; but an arrangement that fell short of that, if it had any efficiency, would have to be proved, and then would form no basis for a writ of error in a case circumstanced like the present.

As matter of fact, General Scott and Governor Douglass failed to come to any agreement. (Executive Doc., 1st sess. 36th Cong., vol. 9, No. 65, pp. 64–73.)

So far from conceding the sovereignty of San Juan to be in abeyance, our Government always claimed it, and General Scott stipulated that his proposed arrangement should be "without prejudice" to that claim. (*Ib.*)

Nor was it even suggested that the jurisdiction of the civil tribunals be disturbed; but each force was to seize and confine or send from the island those who tried to create ill-feeling or committed offenses, the arrest to be made by the force of that nation to which the offender belonged. . (*Ib.*, pp. 69–70.)

The very terms of the treaty by which this question was submitted to King William of Prussia, show that the United States had always claimed to the "Canal de Haro," and, consequently, jurisdiction over San Juan. (17 Stats. at Large, 874-5; "Berlin Arbitration," p. 5.)

II.

The United States not only always claimed San Juan, but the decision of the arbitrator showed that claim to be just. (See vol. 1, part 5, Ex. Doc. Ho. of Reps., No. 1, "Berlin Arbitration," pp. 266–7.)

The point submitted and determined was not where the jurisdictional line should be in the future, but which nation was right in its claim as to the position of that line under and since the treaty of 1846. (17 Stats. at Large, 874–5.)

The finding as to the location of a line upon the face of the earth is an adjudication *in rem*, declaring where that line always has been since its creation. (Pitman *v.* Albany, 34 N. H., 577.)

Parties, whether nations or individuals, agree upon a line; its legal existence and the place where it belongs are as certain, in law, before as after the mechanical work of running it is completed. (Ableman *v.* Booth, 21 Howard, 515.)

The question of sovereignty is a political one. Courts acquiesce in those limits which the political power establishes. (Foster *v.* Neilson, 2 Pet., 254; State *v.* Dunnell, 3 R. I., 127; State *v.* Wagner, 61 Maine, 178; Williams *v.* Suffolk Ins. Co., 13 Pet., 420; Garcia *v.* Lee, 12 Pet., 511.)

III.

If there were no law, treaty, or clause of the Constitution brought in question, then, of course, this Court has no jurisdiction of the cause; but, if there is any such treaty, unknown to us and not to be found upon the statute-book, then, if that be rightly construed by

the court below, this Court has no jurisdiction to review the record as to any other question, or to consider any other errors than such as involve the construction of the Constitution or some treaty or law of the United States, since the language giving a writ of error from this Court to the supreme court of Washington Territory is the same as that authorizing it to issue to State courts, to which a construction was given in Murdoch *v.* Memphis, 20 Wallace, 590; R. S., 338, § 1911.

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